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TO: Flathead County Planning Board

FROM: Mark Mussman, CFM, Director

DATE: May 11, 2016

RE: FLLSTA-16-01: Revisions to the Flathead County Lake and Lakeshore Protection Regulations

The Flathead County Planning and Zoning Department is proposing revisions to the Flathead County Lake and Lakeshore Protection Regulations. As you may recall, staff distributed the initial draft of the proposed changes in January and the Planning Board held a workshop to discuss the proposed changes on March 9, 2016. After taking very helpful comments from the City of Whitefish along with other members of the area with long time experience working on lakeshore projects throughout the County and productive discussion from the Planning Board, many, but not all, of the changes discussed at the workshop have been incorporated into the a revised draft of the revisions. The Department also received comments from the White Lake Institute, some of which have also been incorporated into the revised draft. As you review the attached document, you should notice the comments in the right hand margin that briefly explain the reasons for the proposed changes.

Even though the draft includes brief comments on the reasons for the changes in language, below I will provide a more in depth analysis of the more important issues that surfaced during the Planning Board's workshop:

1. **Slope description:** The workshop draft proposed to change the ratio for fill slopes to 1:2 with the explanation that it is most common to describe the ratio as rise over run. The Planning Board suggested at the workshop that staff review how the City of Whitefish regulations describe the slope ratio and incorporate that description into these revisions. The City's regulations in this matter state, "one horizontal (run) to two vertical (rise). This results in the common 2:1 which translates into rise over run. To clarify the slope ratio throughout the regulations, the language now includes, "one horizontal to two vertical or a 2:1 ratio.
2. **On grade structures:** The County regulations allow certain structures, including decks and patios, to be developed in the Lakeshore Protection Zone as long as these structures are generally at grade. The City of Whitefish commented that these structures may be problematic for Whitefish Lake properties that may be annexed into the City in the future

because the County would allow structures that would be non-conforming if annexed into the City. It should be pointed out that every land use department throughout the country deals with non-conforming issues on a daily basis. Staff feels that prohibiting on grade structures within the Lakeshore Protection Zone throughout the entire County simply because the few properties located on Whitefish Lake could have non-conforming structures when annexed into the city is not in the best interest to the multitude of other County residents.

3. **Additional Lakes:** There was some discussion regarding the additional lakes included in Section 1.4. The list of lakes outlined in the regulations is included for easy reference. The actual regulated lakes in Flathead County include more than what is contained in the list. To be regulated, a water body needs to be at least 20 acres in size for at least six months in a year of average precipitation. This is determined by reviewing the best available data, including County GIS images, Google Earth images and USGS data. It should be noted that many of the lakes listed in the regulations, including some of the proposed additions, are in remote areas surrounded by public lands. This means that the short term potential for lakeshore development may be limited; however, these lakes could experience lakeshore development in the future.
4. **Common Docks:** The Planning Board discussed common dock standards during the workshop. Additional standards are proposed in this draft that mirrors the City of Whitefish regulations.
5. **Dock widths and jet ski “ports:”** The Planning Board also heard comments regarding jet ski “ports” and other popular features that could be included in new dock development. It was argued at the workshop that these “ports” should not be included in the width of a dock. However, after researching how other jurisdictions deal with this issue, including the City of Whitefish, staff determined that other jurisdictions, including the City of Whitefish, does include boat lifts and jet ski “ports” in dock width and does not allow a dock to be over eight feet in width.
6. **Native vegetation:** In their comments submitted to the Department, the Whitefish Lake Institute suggested that the County regulations replace the term **natural** vegetation with **native** vegetation in an attempt to reduce the introduction of potentially invasive plant species. This draft proposes to make that change and also includes a definition of **native** vegetation.
7. **Prohibit lawns, fertilizer etc. from the Lakeshore Protection Zone:** There was discussion regarding creating lawns within the Lakeshore Protection Zone during the workshop. The creation and maintenance of a lawn, including the application of fertilizer and other chemicals, within the Lakeshore Protection Zone has the potential to negatively impact water quality. The City of Whitefish specifically prohibits the maintenance of lawns in the Lakeshore Protection Zone and the Whitefish Lake Institute recommends that prohibition be included in the County’s regulations.
8. **Small-scale vegetation removal:** A proposed addition to the administrative permit procedure found in Section 3.5 is “small-scale vegetation removal as determined on a case by case basis.” Currently, the removal of any tree, including dead trees requires approval by the County Commissioners. Including the possibility of very limited tree and other vegetation removal via the administrative procedures should encourage property owners to go through the approval process as opposed to cutting down a dead tree prior to approval. However, comments received from the Whitefish Lake Institute suggested that

a definition for small-scale vegetation removal be included in the proposed regulations. A definition is included in this draft for the Planning Board to review and suggest any improvements to it as needed.

As staff has explained leading up to this hearing, the current regulations are, at times, confusing and a challenge to administer. The proposed revisions should clear up any confusion and be much more effective and efficient to administer. Moreover, the revised regulations also attempt to consider many of the comments received from the Whitefish Lake community and those suggestions that seem most relevant to all of the lakes in Flathead County are included in this draft. Staff recommends the Planning Board pass on a positive recommendation to the Board of Commissioners because the proposed revisions met or exceed the requirements found in Montana Code 75-7-201 through 217, and because these regulations maintain and enhance the health, safety, welfare and quality of life for all citizens of Flathead County.